

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SALZGITTER MANESMANN §
INTERNATIONAL USA INC. §
Plaintiff, §
§
v. § C.A. NO. _____
§ Admiralty Rule 9(h)
M/T FEARLESS, §
her engines, tackle, boilers, etc. *in rem*, §
§
v. §
§
BROCHART KB, and §
FEARLESS SHIPPING & TRADING SA §
Defendants §

COMPLAINT

1. Plaintiff, SALZGITTER MANESMANN INTERNATIONAL USA INC. (“SALZGITTER”) by its attorneys, Hill Rivkins LLP, complaining of the M/T Fearless, *in rem*, BROCHART KB, (“BROCHART”) and FEARLESS SHIPPING & TRADING SA (“FST”) (collectively “Defendants”), alleges upon information and belief:

A.

2. This is an admiralty or maritime claim within the meaning of 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure, or is brought pursuant to 9 U.S.C.A. § 8, for preservation of *in rem* security for arbitration.

B.

3. At and during all the times hereinafter mentioned, SALZGITTER was the consignee and owner of the cargo in question and brings this action on its own behalf and on behalf of all who may become interested in the cargo. SALZGITTER had and now has the legal status and principal office and place of business stated in Schedule A attached.

C.

4. At and during all the times hereinafter mentioned, BROCHART and FST had and now have the legal status and offices and places of business stated in Schedule A. They were, and now are, engaged in business as carriers of merchandise by water for hire, and owned, operated, managed, chartered and controlled the above-named vessel, M/T Fearless, which was within the jurisdiction of a U.S. Court at the time of discharge and the P&I Club for the M/V Fearless issued a Letter of Undertaking to preserve the *in rem* right against the ship and avoid arrest (see Exhibit 1) .

D.

5. Issuance and delivery of process *in rem* was accomplished on or before August 1, 2017 upon arrival of the vessel in the jurisdiction of a United States court, resulting in issuance of the Exhibit 1 Letter of Undertaking, conceding *in rem* jurisdiction over the M/V Fearless in a U.S. District Court.

E.

6. On or about May 1, 2017, (and other dates in that time-frame) at ports in Turkey, the M/T FEARLESS and defendants BROCHART and FST received, in good order and condition, shipments of Steel Coils, described in Schedule A, which the vessel and defendants BROCHART and FST accepted and agreed to transport for certain consideration to the Port of Detroit, Michigan.

F.

7. Thereafter, the vessel arrived at the Port of Detroit, Michigan, where the cargo of Steel Coils were found to be physically damaged or rust damaged, causing monetary damages to

Plaintiff an the amount of sixty-six thousand two hundred eighty-nine and 57/100 dollars (\$66,289.57) as enumerated herein. On information and belief, the vessel and defendants BROCHART and FST breached, failed and violated their duties and obligations as ocean carriers and were otherwise at fault.

G.

8. Plaintiff further alleges, in the alternative and without waiving the above cause of action, that all defendants were bailees of plaintiff's cargo described in Schedule A. Defendants delivered the cargo described in Schedule A in a damaged condition which did not exist at the time of plaintiff's/bailor's delivery to the bailees as described in Schedule A. Defendants breached their duties and obligations as bailees and were negligent.

H.

9. Plaintiff was the shipper, consignee and/or owner of the shipment and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

I.

10. Plaintiff has duly performed all duties and obligations on its part to be performed.

J.

11. By reason of the above-stated premises, plaintiff has sustained damages, as nearly as same can now be estimated, no part of which has been paid although duly demanded, in the amount of sixty-six thousand two hundred eighty-nine and 57/100 dollars (\$66,289.57) for which Plaintiff demands recovery from all defendants, jointly and severally.

K.

12. All and singular the premises are true and within the admiralty, maritime, and pendent jurisdiction of the United States and of this Honorable Court.

Wherefore, Plaintiff prays:

1. That summons in due form of law may issue against defendants;
2. That a judgment may be entered in favor of plaintiff against defendants, one or more of them, for the amount of plaintiff's damages together with interest and the costs and disbursements of this action;
3. That process in due form of law according to the practice of this court in causes of admiralty or maritime jurisdiction may issue against said the vessel, her engines, etc., *in rem*, as the only known asset of the defendants BROCHART and FST to preserve the Exhibit 1 Letter of Undertaking for a potential future arbitration award against the M/V Fearless and defendants BROCHART and FST, and that all persons having or claiming any interest therein be cited to appear and answer under oath all and singular the matters stated, and this court will be pleased to pronounce a judgment in favor of plaintiff for damages together with interest, costs and disbursements, and the motor vessel may be condemned and sold to pay therefor; and
4. That this court will grant to plaintiff such other and further relief as may be just and proper.

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFF
SALZGITTER MANNESMANN INTERNATIONAL USA INC.**

VERIFICATION

THE STATE OF TEXAS *
*
COUNTY OF HARRIS *

Dana K. Martin, being duly sworn, deposes and says:

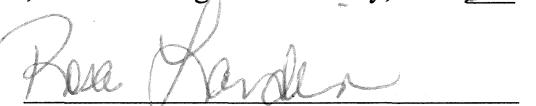
I am an attorney and member of the firm of Hill Rivkins LLP, attorneys for Plaintiff. I am over twenty-one (21) years of age and fully competent to make this Verification. I have read the foregoing Complaint and know its contents. The Complaint is true to my knowledge, except as to the matters stated in the Complaint to be based on information and belief, and as to those matters, I believe them to be true.

The source of my information and the grounds for my belief as to those matters stated in the Complaint, to be alleged on information and belief, are documents and records in my files.

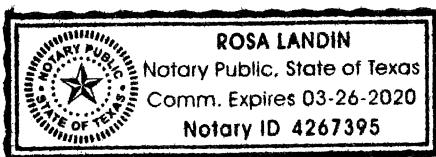


Dana K. Martin

Subscribed and sworn to before me, the undersigned authority, this 6th day of June, 2018.



Rosa Landin
Notary Public, State of Texas
My Commission Expires: 3/26/20



SCHEDULE A

LEGAL STATUS AND PLACE OF BUSINESS OF PARTIES

Plaintiff, **SALZGITTER MANNESMANN INTERNATIONAL USA INC.** was and now is a Texas corporation with a headquarters located in Houston, Texas.

M/T FEARLESS was at all material times a general cargo ship sailing under the Liberian flag. The vessel was built in 2001, its call sign is D5EB8 and its gross tonnage is 18,049 tons.

Defendant, **BROCHART KB**, was and now is a foreign corporation, or similar entity, with power to sue and be sued, which regularly does business in the United States as a common carrier of goods, which does not maintain a designated agent on whom service may be made in Texas, and thus may be served through Hague Convention Service, and/or F.R.C.P. 4(k)2, in care of its home office at: Trappvagen 5 SE, 191 35 Solentuna, Sweden

Defendant, **FEARLESS SHIPPING & TRADING SA**, was and now is a foreign corporation, or similar entity, with power to sue and be sued, which regularly does business in the United States as a common carrier of goods, which does not maintain a designated agent in Texas upon whom service may be made, and thus may be served through Hague Convention Service, and / or F.R.C.P. 4(k)2, in care of its home offices .c/o Phoenix Shipping & Trading SA, 47-49 Akti Miaouli, 185 36 Piraeus, Greece

DESCRIPTION OF SHIPMENT

| | |
|---------------------------|-----------------------------------------------------------------------------|
| Vessel: | M/T Fearless |
| Dates of Shipment: | on or about May 1, 2017 |
| Ports of Shipment: | Karasu Port, Turkey |
| Port of Discharge: | Detroit, Michigan |
| Shippers: | Gazi Metal Mamuleri San V.E. Tic. AS |
| Consignee: | Salzgitter Mannesmann International USA Inc. |
| Description of Shipments: | Steel Coils |
| Nature of Loss or Damage: | Physically damaged or rust damaged |
| Amount: | sixty-six thousand two hundred eighty-nine and 57/100 dollars (\$66,289.57) |

Exhibit 1



SHIP OWNERS CLAIMS BUREAU, INC., MANAGER
ONE BATTERY PARK PLAZA - 31ST FLOOR NEW YORK, NEW YORK 10004 USA
TEL: +1.212.847.4500 FAX: +1.212.847.4599 WEB: WWW.AMERICAN-CLUB.COM

August 1, 2017

**SALZGITTER MANNESMANN
INTERNATIONAL (USA) INC.**
c/o Hill Rivkins, LLP
55 Waugh Drive, Suite 1200
Houston, TX 77007

RE: **M/V FEARLESS, at Detroit, MI., June 14, 2017**
Alleged Damage to steel coils under B/L BHKB170501DET01
dated May 1, 2017
Our Ref: 20170156

Dear Sirs:

In consideration of your refraining from arresting and attaching the M/V FEARLESS, or arresting, detaining or attaching any other property belonging to the owners and/or operators and/or managers and/or agents of the said vessel in connection with a claim brought by Cargo Owner, and/or their Underwriters arising out of and/or resulting from alleged damage to steel coils under B/L BHKB170501DET01, dated May 1, 2017 discharged at Detroit on or about June 14, 2017, the undersigned Association hereby agrees, vessel lost or not lost:

1. To file, or cause to be filed, upon your demand an appearance and answer on behalf of the Owners of the M/V FEARLESS, and an in rem claim to the M/V FEARLESS, by her Owners, in any suit or arbitration (as may be applicable) which you may commence in a Court or tribunal in the UNITED STATES against the M/V FEARLESS, in rem;
2. In the event that a final judgement or award (after all appeals, if any) is entered in favor of Cargo Owner, and/or their Underwriters against the M/V FEARLESS in an action arising out of and/or resulting from alleged damage to the cargo of steel coils under B/L BHKB170501DET01, dated May 1, 2017, aboard the M/V FEARLESS for discharge at Detroit, then the undersigned Association agrees to pay and satisfy said final judgement, inclusive of interest and costs, up to, but not exceeding the sum of \$100,000.00 (ONE HUNDRED THOUSAND U.S. Dollars), or any lesser amount decreed in a Court of competent jurisdiction in the United States or settled between the parties without a final judgement of the Court being rendered, where said settlement has been made with the approval of the undersigned Association, but in no event to exceed the sum of \$100,000.00 (one hundred thousand U.S. Dollars).
3. Upon written demand to cause to be filed a Release Bond in an amount and sufficiency of surety satisfactory to the parties, or failing agreement of the parties, in such amount as may be determined by a Court or tribunal in the United States but in no event to exceed the sum of \$100,000.00 (one hundred thousand U.S. Dollars), securing the alleged claim arising out of and/or resulting from the alleged damage to steel coil under B/L BHKB170501DET01, dated May 1, 2017, from the M/V FEARLESS.



4. In the event the Release Bond referred to under sub-paragraph 3, supra, is filed with the court, the undersigned Association should have no further obligation under sub-paragraph 2 above.
5. It is understood and agreed between the parties to this undertaking that the sum of \$100,000.00 (one hundred thousand U.S. Dollars), either by way of bond or under this obligation can be reduced by the agreement of the parties, or failing said agreement, by order of a Court or tribunal in the United States during the pendency of this obligation.
6. It is further intended by this undertaking that the rights of the M/V FEARLESS, and her claimant/owners be, and for all purposes shall be taken to be, precisely the same as though the M/V FEARLESS had in fact been arrested or attached and released by the filing of a claim and release bond, reservation being made on behalf of M/V FEARLESS and her claimant/owners and/or operators and/or managers of all of the rights, defenses and objections which they may have, none of which are to be deemed as waived, and further, that this letter of undertaking shall not constitute a general appearance of the M/V FEARLESS and/or her in rem claimant/owners and is specifically restricted to this in rem and quasi in rem claim and in rem and quasi in rem jurisdiction.

This letter of undertaking is not to be considered as an admission of liability and is written entirely without prejudice to any rights, defenses, immunities or limitations which the Shipowners may have, none of which are regarded as waived.

It is understood and agreed that the execution of this letter by the signatory is not and shall not under any circumstances be construed as personally binding, nor binding upon Shipowners Claims Bureau, Inc., but is binding only upon the American Steamship Owners Mutual Protection and Indemnity Association, Inc.

Yours faithfully,

Charles B. Gornell

Charles B. Gornell
Vice President – Claims Manager
Shipowners Claims Bureau, Inc.
As Manager for and on behalf of
American Steamship Owners Mutual Protection and Indemnity Association, Inc.